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HOUSE BILL 1020

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO TRUSTS; AMENDING AND ENACTING CERTAIN SECTIONS OF
THE UNIFORM TRUST CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 46A-1-101 NMSA 1978 (being Laws 2003,
Chapter 122, Section 1-101) is amended to read:

"46A-1-101. SHORT TITLE.--~~[This act]~~ Sections 46A-1-101
through 46A-11-1104 NMSA 1978 may be cited as the "Uniform
Trust Code"."

Section 2. Section 46A-1-105 NMSA 1978 (being Laws 2003,
Chapter 122, Section 1-105) is amended to read:

"46A-1-105. DEFAULT AND MANDATORY RULES.--

A. Except as otherwise provided in the terms of the
trust, the Uniform Trust Code governs the duties and powers of
a trustee, relations among trustees and the rights and

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1 interests of a beneficiary.

2 B. The terms of a trust prevail over any provision
3 of the Uniform Trust Code except:

4 (1) the requirements for creating a trust;

5 (2) the duty of a trustee to act in good faith
6 and in accordance with the purposes of the trust;

7 (3) the requirement that a trust and its terms
8 be for the benefit of its beneficiaries and that the trust have
9 a purpose that is lawful, not contrary to public policy and
10 possible to achieve;

11 (4) the power of the court to modify or
12 terminate a trust under Sections [~~4-410 through 4-416 of the~~
13 ~~Uniform Trust Code~~] 46A-4-410 through 46A-4-416 NMSA 1978;

14 (5) the effect of a spendthrift provision and
15 the rights of certain creditors and assignees to reach a trust
16 as provided in Chapter 46A, Article 5 [~~of the Uniform Trust~~
17 ~~Code~~] NMSA 1978;

18 (6) the power of the court under Section
19 [~~7-702 of the Uniform Trust Code~~] 46A-7-702 NMSA 1978 to
20 require, dispense with or modify or terminate a bond;

21 (7) the power of the court under Subsection B
22 of Section [~~7-708 of the Uniform Trust Code~~] 46A-7-708 NMSA
23 1978 to adjust a trustee's compensation specified in the terms
24 of the trust that is unreasonably low or high;

25 (8) except for a [~~qualified~~] beneficiary who

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1 has not attained twenty-five years of age, the duty under
2 Paragraphs (2) and (3) of Subsection B of Section [~~8-813 of the~~
3 ~~Uniform Trust Code~~] 46A-8-813 NMSA 1978 to notify [~~qualified~~
4 ascertainable beneficiaries of an irrevocable trust of the
5 existence of the trust, of the identity of the trustee and of
6 their right to request reports of the trustee;

7 (9) the duty under Subsection A of Section
8 [~~8-813 of the Uniform Trust Code~~] 46A-8-813 NMSA 1978 to
9 respond to the request of a beneficiary of an irrevocable trust
10 for a trustee's reports and other information reasonably
11 related to the administration of a trust;

12 (10) the effect of an exculpatory term under
13 Section [~~10-1007 of the Uniform Trust Code~~] 46A-10-1007 NMSA
14 1978;

15 (11) the rights under Sections [~~10-1008~~
16 ~~through 10-1012 of the Uniform Trust Code~~] 46A-10-1008 through
17 46A-10-1012 NMSA 1978 of a person other than a trustee or
18 beneficiary;

19 (12) periods of limitation for commencing a
20 judicial proceeding;

21 (13) the power of the court to take such
22 action and exercise such jurisdiction as may be necessary in
23 the interests of justice; and

24 (14) the subject-matter jurisdiction of the
25 court and venue for commencing a proceeding as provided in

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1 Sections [~~2-203 and 2-204 of the Uniform Trust Code~~] 46A-2-203
2 and 46A-2-204 NMSA 1978."

3 Section 3. A new section of the Uniform Trust Code,
4 Section 46A-2-204 NMSA 1978, is enacted to read:

5 "46A-2-204. [NEW MATERIAL] VENUE.--

6 A. Except as provided in Subsection B of this
7 section, venue for a judicial proceeding involving a trust is
8 in the district court for the county in which the trust's
9 principal place of administration is or will be located or, if
10 the trust is created by will and the estate is not yet closed,
11 in the district court for the county in which the decedent's
12 estate is being administered.

13 B. If a trust has no trustee, venue for a judicial
14 proceeding for the appointment of a trustee is in the district
15 court for a county in which a beneficiary resides, in which any
16 trust property is located, or if the trust is created by will,
17 in which the decedent's estate was or is being administered."

18 Section 4. Section 46A-8-813 NMSA 1978 (being Laws 2003,
19 Chapter 122, Section 8-813) is amended to read:

20 "46A-8-813. DUTY TO INFORM AND REPORT.--

21 A. A trustee shall keep the [~~qualified~~]
22 ascertainable beneficiaries of the trust reasonably informed
23 about the administration of the trust and of the material facts
24 necessary for them to protect their interests. Unless
25 unreasonable under the circumstances, a trustee shall promptly

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1 respond to a beneficiary's request for information related to
2 the administration of the trust.

3 B. A trustee:

4 (1) upon request of a beneficiary, shall
5 promptly furnish to the beneficiary a copy of the trust
6 instrument;

7 (2) within sixty days after accepting a
8 trusteeship, shall notify the [~~qualified~~] ascertainable
9 beneficiaries of the acceptance and of the trustee's name,
10 address and telephone number;

11 (3) within sixty days after the date the
12 trustee acquires knowledge of the creation of an irrevocable
13 trust, or the date the trustee acquires knowledge that a
14 formerly revocable trust has become irrevocable, whether by the
15 death of the settlor or otherwise, shall notify the [~~qualified~~]
16 ascertainable beneficiaries of the trust's existence, of the
17 identity of the settlor or settlors, of the right to request a
18 copy of the trust instrument and of the right to a trustee's
19 report as provided in Subsection C of this section; and

20 (4) shall notify the [~~qualified~~] ascertainable
21 beneficiaries in advance of any change in the method or rate of
22 the trustee's compensation.

23 C. A trustee shall send to the distributees or
24 permissible distributees of trust income or principal, and to
25 other qualified or nonqualified beneficiaries who request it,

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1 at least annually and at the termination of the trust, a report
2 of the trust property, liabilities, receipts and disbursements,
3 including the source and amount of the trustee's compensation,
4 a listing of the trust assets and, if feasible, their
5 respective market values. Upon a vacancy in a trusteeship,
6 unless a co-trustee remains in office, a report must be sent to
7 the qualified beneficiaries by the former trustee. A personal
8 representative, conservator or guardian may send the qualified
9 beneficiaries a report on behalf of a deceased or incapacitated
10 trustee.

11 D. A beneficiary may waive the right to a trustee's
12 report or other information otherwise required to be furnished
13 under this section. A beneficiary, with respect to future
14 reports and other information, may withdraw a waiver previously
15 given.

16 E. Paragraphs (2) and (3) of Subsection B of this
17 section apply only to:

18 (1) trustees who accept a trusteeship on or
19 after July 1, 2003;

20 (2) irrevocable trusts created on or after
21 July 1, 2003; and

22 (3) revocable trusts that become irrevocable
23 on or after July 1, 2003."